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The Honorable John D. Dingell, Ranking Member
Commerce Committee Democratic Office
564 Ford House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Dingell:

The Consumers' Utility Counsel ("CUC") Division of the Governor's Office of Consumer Affairs is pleased to submit responses to the questions that were included in your April 10, 1997, letter to our office. CUC believes that restructuring should in no way be forced upon the State of Georgia and is strongly resistant to any attempts to do so. Therefore, any discussion in our answers should not be viewed in any way as a concession in favor of restructuring. CUC is adamantly opposed to restructuring electricity in Georgia unless and until it can be concretely and conclusively demonstrated that there will be significant benefits for all small consumers. Additionally, CUC strenuously insists that any restructuring, when and if it should come, must be designed at the state level, with Congressional participation only upon request.

1. How has the increased competition in wholesale electric markets affected consumers in your states to date?

Ratepayers in Georgia have benefited from wholesale competition because Georgia Power Company, under diligent Public Service Commission oversight, has issued to power suppliers requests for proposals which have facilitated robust bidding procedures. Georgia Power Company has entered into power purchase agreements with Mid Georgia Cogen, Cataula Generating Company and Florida Power Corporation.

2. What role has your office played in any state proceedings on retail competition? What position has your office taken on the issue of whether or not retail competition would benefit consumers and on the issue of whether or not federal legislation mandating adoption of retail competition by a date certain, or any other type of federal legislation, is needed? Do you believe there are substantial differences among the various states' consumer advocates, and why or why not?

CUC has filed comments with the Georgia Public Service Commission as well as having participated in workshops on electric restructuring. Prior to rushing towards

competition, the costs and benefits of restructuring should be constantly re-evaluated to gauge if restructuring the electric industry will become appropriate for the state of Georgia at any time. CUC believes that at some time in the future the potential may exist for residential and small commercial customers to benefit from competition. However, it will be necessary for the state to design the appropriate restructuring methodology and to put into place safeguards to ensure that all customers still can receive affordable and reliable electric service.

CUC emphatically opposes federally mandated restructuring by a date certain. Such legislation would force states with relatively low electricity rates to take risks that may hurt the ratepayers of the state. It would also force poor decision making as the deadline for restructuring neared.

The state of the electric industry is vastly different in various states. Differences between consumer advocates most likely do naturally occur in instances in which there is a disparity regarding what is best for the customers in the respective states.

3. **Some proponents of federal legislation mandating that states adopt retail competition by a date certain argue that substantial numbers of large industrial customers recently have negotiated favorable rates with their public utility commissions. Such proponents have further argued that residential and small commercial consumers lack bargaining power to achieve similar rate reductions. Finally, these proponents argue that federal legislation is essential to ensure that smaller consumers are not economically disadvantaged relative to large industrial customers.**
 - a. **Please indicate whether or not you agree with the three premises outlined above.**
 - b. **In particular, please indicate whether you have reason to believe that large industrial customers are being favored in rate negotiations before public utility commissions relative to smaller commercial and residential customers. What type of state statutory direction generally governs such rate determinations? Historically, how have states balanced the interests of different customer classes? Is this changing?**
 - c. **What position has your office taken in recent rate proceedings concerning large industrial customers' requests for rate reductions?**
 - d. **In general, have consumer electricity prices in your State been rising, holding steady, or falling, and why?**

CUC agrees that smaller consumers do not have the same bargaining power that larger industrial customers often have. However, CUC also believes that a competitive

environment will not solve this disparity in leverage, unless the proper safeguards are set in place.

Historically in Georgia, an electric utility supports its revenue requirement and rate design testimony with cost of service studies. Neither of the two investor owned utilities in Georgia, Georgia Power Company nor Savannah Electric and Power Company, have filed for a rate case in recent years. The Georgia Public Service Commission directed Georgia Power Company to file a rate case on July 1, 1998.

Georgia Power Company has entered into several special contracts with industrial customers to keep those customers from leaving the state. These special contracts offer the industrial customers discounts for their electric service, while still providing benefits to the residential and small business customers over what would occur if the business left the state. Georgia Power Company has not sought recovery for these discounts up to this point.

4. **What are the most difficult issues to resolve in connection with utilities' stranded costs? To the extent your State has adopted, or is considering adopting, retail competition, has there been an attempt to distinguish between costs which were prudently incurred and those which were not? If Congress were to enact legislation mandating that states adopt retail competition by a date certain, what, if any, provisions relating to stranded costs should be included? Is securitization a useful tool, and how would it affect different interests?**

The most difficult issue with respect to stranded costs would be allocating them in such a way that didn't hinder any competition that was supposed to have been created by restructuring. If ratepayers have to bear all of the stranded costs, then for smaller customers, the benefits that were supposed to accompany restructuring would be delayed, or eliminated.

The Georgia Public Service Commission has held workshops in which stranded costs have been discussed, and prudently incurred mitigated stranded costs have been distinguished from costs which have not been so incurred. Any stranded cost discussions should, at a minimum, take into consideration which customers are responsible for the costs being incurred, whether the costs could have been mitigated, whether the costs were prudently incurred and whether the utility earned a return on its investment prior to the investment becoming stranded. Discussions should also consider a distinction for those customers that are responsible for the costs being stranded. No treatment of stranded costs should predetermine that ratepayers should have to bear the costs for a particular stranded investment. Stranded cost issues are particularly complex in Georgia due to the large number of EMCs and municipal utilities in the state; therefore, CUC believes that the federal government should leave the state to fix its own stranded investment problems, without federal interference.

5. **Some proponents of retail competition hold the view that all electricity resources should be sold at market prices and that state authority to regulate retail rates should be eliminated. Could such a policy result in rate increases for customers that currently receive the benefit of such low-cost resources? In a restructured electric utility industry, who should receive the benefits of these low-cost resources -- utility ratepayers, utility shareholders, or simply the highest bidder?**

Removing the safeguards of regulation imposes risks on everyone. The issue becomes whether the risk is worth taking based on the current structure of the industry. In Georgia, customers receive relatively low cost and reliable electric service; therefore it would be imprudent to take this risk without a better understanding of the likelihood that residential and small commercial customers would be better off in a restructured electric industry.

6. **Recently there has been increased discussion of the need for Congress to enact "reciprocity" requirements barring retail sales of power by parties located in states which have not adopted retail competition to parties in states which have adopted retail competition.**
- a. **Do you have a position on this issue?**
 - b. **Which interests would benefit from a federal reciprocity requirement, which would not, and why?**

CUC has not yet taken a position on this issue.

7. **Does your State currently have adequate tools to protect the interests of low-income electricity consumers if Congress were to mandate retail competition by a date certain? If such legislation were enacted, do you have any recommendations as to how Congress should approach this important issue?**

No, federally mandated competition would be an unfunded mandate for small consumers. The CUC telephony workload quadrupled because of "deregulation." Mandated federal deregulation without federal funds for the increased workload would be a travesty for small consumers since it is difficult to make legislators see a need to increase funding in an area which is being "deregulated."

Electricity is a necessity, not a luxury. Under any scenario, low-income customers need to be protected. Federal legislation that sets a date certain without regard to the circumstances in a particular state may force that state into short sighted inefficient decision-making. Individual states will best deal with restructuring issues in the most appropriate way and at the most appropriate time as determined by that state. Georgia has addressed similar issues recently in the natural gas and telecommunications industries, and is capable of reaching the proper conclusions.

8. **Do you have any concerns about reliability of service or the ability of the interstate transmission or local distribution systems to handle the transactions that would occur if retail competition became more prevalent?**

In a regulated environment, utilities often cooperate in times of emergency and crisis, e.g. Hurricane Hugo. Retail competition would jeopardize this cooperation. Also, from a planning perspective, utilities may be less willing to reveal information that may be of value to competitors. This could lead to more short term decision-making that could potentially hinder reliability.

9. **Are rural and urban consumers in different positions with respect to their relative ability to bargain for competitive electricity prices? Are all consumers similarly situated in terms of aggregation?**

Rural consumers are more expensive to serve than urban consumers. In a deregulated environment, this will make these customers less attractive to power suppliers. In addition, rural power suppliers often only have a few large customers. If one of these customers leaves for a different supplier, then the rate impact for the remaining customers will be more dramatic than with a supplier with many large customers. Low income consumers cannot effectively aggregate without monetary subsidization and organizational support.

10. **Some proponents of retail competition have argued in favor of federal legislation requiring states to adopt retail competition regimes which include mandatory unbundling of those services currently provided by local distribution companies. What advantages and disadvantages might this pose for consumers? Do you have any recommendations?**

The advantage of unbundling these services would be more customer choice. But choice itself is not a panacea; choice is only valuable if it does, in fact, lead to lower prices. And customer choice is only valuable if one of the choices under unbundling is preferable to the current situation. Required unbundling means that residential and small commercial customers that are currently paying relatively low rates for electric service may not always be the most sought after customers. These customers may not be offered the savings that larger industrial customers would receive under restructuring.

Each particular state must have the ability to move at its own pace. The situation is different in each state, and it is no coincidence that those states with the highest electricity rates are the ones that have been moving most quickly towards deregulation.

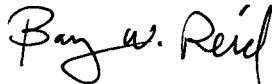
11. **There is a wide divergence of opinion as to whether or not the Public Utility Holding Company Act of 1935 (PUHCA) should be modified or repealed. In view of the recent merger trend, PUHCA's protections have significance for all states, whether or not they traditionally have been served by a registered holding company.**

- a. **Do you believe PUHCA is a significant impediment to competition, at the wholesale or retail level, or can "effective competition" be achieved regardless of whether Congress enacts changes to PUHCA?**
- b. **Do you believe Congress should modify or repeal PUHCA, why, and under what, if any, conditions?**
- c. **Should Congress enact legislation to modify the holding in Ohio Power v. FERC, 954 F.2d 779 (D.C. Cir. 1992)?**

A major purpose of PUHCA is to mitigate market power. Deregulation will not create full and robust competition if any player dominates the market. It is premature to repeal or substantially weaken PUHCA until it is determined that effective competition exists. Furthermore, a restructured electric industry will absolutely require a federal agency with the sole purpose of enforcing antitrust laws vis a vis utilities to ensure that mergers benefit residential and small commercial consumers. It should be considered whether FERC would be a more appropriate agency than the SEC to enforce the goals of PUHCA, and the goals of PUHCA should be broadened to include all manner of mergers, buy-outs, takeovers, etc., regardless of whether or not a holding company is involved.

Thank you very much for the opportunity to comment on these important issues. Please feel free to contact us if we can be of further assistance.

Sincerely,



Barry Reid, Administrator
Governor's Office of Consumer Affairs



Jim Hurt
Director, Consumers' Utility Counsel Division